IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13/09/2004

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

WRIT PETITION NO.19728 OF 2003

Dr.G.T.Thangarajan. .. Petitioner

-Vs-

1. State of Tamilnadu rep. by its
Secretary to Government,
Municipal Administration and
Water Supply Department,
Fort St. George, Chennai-9.

2. The Commissioner,
Corporation of Chennai,
Chennai-3.

3. Dr.Gughanatham,
Assistant Health Officer,
Corporation of Chennai,
Chennai-3. .. Respondents

Writ Petition filed under Article 226 of the Constitution of
India praying to issue a Writ of Certiorarified Mandamus as stated therein.

For petitioner : Mr.C.Selvaraju, S.C.

For first respondent : Ms.V.Velumani, AGP.

For second respondent : Mr.C.Ravichandran.

For third respondent : Mr.ARL.Sundaresan

:O R D E R
This Writ Petition has been filed by the petitioner, praying to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the selection of the third respondent by the Appointment Committee of the second respondent Corporation, as recommended by the second respondent in his proceedings Po.Thu.Na.Ka.No.E2/63691/99 dated 17 .6.2003 as Additional Health Officer, quash the same and direct the respondents to consider the petitioner for the post of Additional Health Officer.

2. The case of the petitioner is that he joined as Assistant Health Officer on 16.6.1989; that when the post of Health Officer becomes vacant, the Additional Health Officer has to be given in-charge; that since the post of Health Officer and that of Additional Health Officer became vacant in the respondent, though he was No.4 in the seniority list of Assistant Health Officer, he was given Health Officer incharge on 20.12.2001, because the three seniors above him were not free from disciplinary proceedings either facing charge memo. or memo. calling for explanation; that out of 11 persons, working as Assistant Health Officer, in which Dr.K.V.Srinivasalu No.1, the third respondent is No.2, Dr.Krishna No.3 and the petitioner herein is No.4; that whenever any panel is drawn, they have to consider the record of service for the past five years from the Crucial Date i.e. 1.4.2002; that the third respondent herein is No.2 in the panel was having punishment of Censure issued on 16.3.2000 and a number of memos. and allegations were leveled against him for non submission of proper accounts for huge sums of money, namely to the tune of Rs.8.6 lakhs, and Rs. one lakh, for which, charges were pending before the Commissioner for approval; that since there are absolutely no remarks or allegations against the petitioner he has also been recommended for the post of Assistant Health Officer; that when the post has to be filled up on merits and on ability basis as per the Rules and instructions issued by the Government, the seniority is only a tilting factor and not a deciding factor, and the deciding factor is merit and ability in this case; that the selection of the third respondent for the post of Additional Health Officer is without any merit and hence it is liable to be set aside. On such averments, the petitioner would pray for the relief extracted supra.

3. In the counter affidavit filed by the second respondent, besides usually denying the general allegations in the petition, he would further submit that the post of Additional Health Officer is to be filled up by promotion on seniority and merit; that admittedly, the petitioner is two step junior below the third respondent and as such he cannot have any grievance in the event of the third respondent being appointed as Additional Health Officer, taking into account the guidelines etc., issued in G.O.Ms.No.367, P&AR (Per-S) Department, dated 12.1 1.1992 read with G.O.Ms.No.368, P&AR(Per-S) Department, dated 18.10.1 993 and Government letter No.248, P&AR (Per-S) Department, dated 20.1 0.1997, an agenda was placed before the Appointment Committee which met on 14.7.2003; that according to the Rules, unless and until any allegations, lapses, etc., reduced to a form of specific charges against the individual under the relevant disciplinary rules contemplating the imposition of major penalties such lapses etc., cannot constitute a bar for inclusion of the individual in a panel for promotion; that since under Section 85(3)(b) of the M.C.M.C. Act, 1919, the appointing authority in respect of the post of Additional Health Officer is the Council of Corporation subject to confirmation by the Government; that the third respondent is senior to the petitioner in the absence of any charges pending against him; that though the third respondent was awarded with punishment of censure by an o rder dated 16.3.2000, the punishment of censure cannot have any adverse force after lapse of one year from the date of its award; that the Local Fund Audit has raised certain objections as per the usual practice and the department, in turn, have in the usual course, submitted their explanations to the Local Fund Audit Department and after consideration of

their explanations and the entire facts, have deleted the objections; that the second respondent Commissioner has placed the Agenda before the Appointment Committee, in accordance with the accepted procedure and Rules; that he has no vested interest with the third respondent as alleged; that there is no violation of procedure or Government Order as alleged by the Writ Petitioner. On such averments, he would pray for dismissal of the above writ petition.

4. In the counter affidavit filed by the third respondent, besides usually denying the general allegations in the petition, he would further submit that he is not only the senior most officer, but also have various qualifications and achievements, which the petitioner can never dream to match; that the award of censure against the third respondent, cannot be treated on par with a punishment, since it is valid only for a period of one year, which got over on 15.3.2001 itself; that he never committed any wrong and holds a clear record of service; that the allegation that he has not accounted for huge sums of money, namely to the tune of Rs.8.6 lakhs and Rs.One lakh, is totally false; that the Local Fund Audit has raised certain objections as per the usual practice and the department, in turn, have in the usual course, submitted their explanations to the Local Fund Audit Department and after consideration of their explanations and the entire facts, they have deleted the objections and hence, there is no violation by the second respondent in appointing the petitioner as Assistant Health Officer. On such averments, he would pray for dismissal of the above writ petition.

5. Heard the learned Senior Counsel for the petitioner, the learned Additional Government Pleader appearing for the first respondent and the learned counsel appearing for respondents 2 and 3 as well and the materials placed on record have also been perused.

6. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both it could be assessed is that the post of Additional Health Officer is filled up by promotion on seniority and merit. Since the petitioner is two step junior below the third respondent, he cannot have any grievance in the event of the third respondent being appointed as Additional Health Officer by the Council subject to confirmation by the Government, taking into account the guidelines etc., issued in G.O.Ms. No.367, P&AR (Per-S) Department, dated 12.11.1992 read with G.O.Ms.No.3 68, P&AR(Per-S) Department, dated 18.10.1993 and Government letter No.248, P&AR (Per-S) Department, dated 20.10.1997, an agenda was placed before the Appointment Committee which met on 14.7.2003. Since the third respondent is senior most to that of the petitioner in the absence of any charges pending against him, the selection of third respondent to the post of Assistant Health Officer is only in accordance with law. According to the instructions contained in G.O.Ms.No.368, P& AR(Per-S) Department, dated 18.10.1993, unless and until any allegations, lapses, etc., reduced to a form of specific charges against the individual under the relevant disciplinary rules contemplating the imposition of major penalties such lapses etc., cannot constitute a bar for inclusion of the individual in a panel for promotion. Since the third respondent is senior most to that of the petitioner, and the

award of censure has its validity only for a period of one year, which got over on 15.3.2001 itself the said petty punishment cannot be treated on par with a punishment. Otherwise he has held a clear record of service. The Local Fund Audit raising certain objections as per the usual practice and the department submitting explanations to the Local Fund Audit Department, after consideration of the explanations, it has deleted the objections. Besides these, under Section 85(3)(b) of the M.C.M.C. Act, 1919, the appointing authority in respect of the post of Additional Health Officer is the Council of Corporation subject to confirmation by the Government, unless and until it is approved by the Council and confirmed by the Government, the third respondent cannot be appointed as Additional Health Officer.

7. In the above facts and circumstances of the case, this Court is of the view that since question of merit and ability is not at all in competition for consideration among the candidates of whom the panel has been drawn and no one could be maligned in contemplation of any disciplinary or such other proceeding in future, this Court does not find any reason to cause its interference into the impugned order passed by the 2nd respondent based on the recommendations of the Appointment Committee thereby selecting the third respondent for the post of Assistant Health Officer in a well considered and merited manner and hence, this writ petition does not merit acceptance but only becomes liable to be dismissed and hence the following order:

In result, for the foregoing reasons assigned, this writ petition does not merit acceptance and is dismissed as such. No costs.

Index:Yes
Internet:Yes

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To

1. State of Tamilnadu rep. by its Secretary to Government, Municipal Administration and Water Supply Department, Fort St. George, Chennai-9.
2. The Commissioner, Corporation of Chennai, Chennai-3.